

Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients

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Introduction

"It is amazing how much light a candle makes in a dark world, and the light of all your candles, gathered here, makes a brightness by which we can see — see each other, see the work to be done, see the way ahead even if it *is* only one step at a time. I bring special greetings from the Court to Southern Minnesota Regional Services, to the Ramsey County Bar Association and its volunteer attorney program and to each of you, individually, whatever your professional role, as you make every effort to see that those among us who are disadvantaged and disabled by reason of age, youth, physical and mental illness, racial and sexual discrimination, unemployment — all wrapped around by poverty — have the legal services, at least the critical legal services they so badly need. We are proud of you.

Once again, in this area of providing legal services to the disadvantaged as in so many other areas, Minnesota has shown itself to be a community of concerned and caring people. You not only put your money where your mouth is, you put your time, your energy, your very selves there as well. And even if you may sometimes feel that all you are able to do is only a drop in the bucket, if you were the one on whose tongue that drop fell, you would be reassured that the effort is infinitely worthwhile."¹

With these words, Minnesota Supreme Court Associate Justice Rosalie E. Wahl began an address to attorneys and judges gathered for a celebration of the tenth anniversary of the Southern Minnesota Regional Legal Services (SMRLS)/Ramsey County Volunteer Attorney Program on November 8, 1984.

The year 1984 was significant for the SMRLS/Ramsey County Volunteer Attorney Program because the volunteer panel size had doubled in the prior two years, from 100 to 200 members. Simi-

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1. Justice Rosalie Wahl, Address at the Tenth Anniversary Celebration of the Ramsey County Volunteer Panel (Nov. 8, 1984), in Daniel P. O'Keefe, *Volunteer Lawyers Honored*, RAMSEY BARRISTER, Dec. 1984, at 2.

larly, other existing volunteer attorney programs grew in size and new ones were developed throughout Minnesota in the early 1980s in response to severe cutbacks in federal funding of civil legal services programs, as well as Legal Services Corporation requirements that a percentage of base grants be used by grantees to fund private attorney involvement programs.

In her remarks, Justice Wahl noted several other landmark developments in the delivery of civil legal services to low-income persons in Minnesota in the early 1980s. The Minnesota legal community helped lobby Congress to prevent the complete destruction of the Legal Services Corporation. The filing fee surcharge legislation was passed, Interest on Lawyers Trust Account program (IOLTA) was established, the Minnesota State Bar Association's (MSBA) Legal Assistance to Disadvantaged Committee (LAD) was established, innovative programs began in local volunteer programs, such as the SMRLS/3M Corporate Pro Bono Program, and the Minnesota Justice Foundation law student volunteer program got off to a start in Minnesota's three law schools.²

Since the early 1980s, volunteer attorney programs have continued to grow. The pool of attorneys who volunteer their services through the structured programs in Minnesota has increased from under 500 to over 3000.³ The actual number of volunteers is much greater than 3000 now, and the LAD Committee is currently considering ways to measure more accurately the scope of donated legal services.⁴

In addition to the increase in the numbers of volunteer attorneys, the number of structured volunteer attorney programs has grown dramatically since the early 1980s. In June of 1993, the LAD Committee published the second volume of the *Directory of Pro Bono Opportunities for Attorneys*. The directory lists over seventy organizations that provide formal opportunities for attorneys to volunteer.⁵ The directory includes a variety of program structures, including volunteer programs that are connected to legal services offices, free standing volunteer programs, and social services agencies with a volunteer attorney component. The programs are broken down by areas of substantive law so volunteer attorneys

2. *Id.*

3. ABA 1994 Harrison Tweed Award Nominee Information Sheet for Minnesota State Bar Association 4 [hereinafter Harrison Tweed Award].

4. Michael J. Galvin, Jr., *Donated Legal Service*, BENCH & BAR OF MINNESOTA, Sept. 1994, at 5.

5. Legal Assistance to the Disadvantaged Committee, Minnesota State Bar Association, *Directory of Pro Bono Opportunities for Attorneys* (June 1993 & July 1994 update).

can choose to volunteer in areas of their own expertise and interest.⁶

Much credit should go to the Minnesota State Bar Association (MSBA) for the tremendous growth in opportunities for attorneys to volunteer and the concomitant growth in the ranks of volunteers. The MSBA has a fourteen year history of innovative efforts to expand the availability of legal services to low-income Minnesotans. On August 5, 1994 the MSBA was awarded the prestigious 1994 Harrison Tweed Award by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA). The award was created in 1956 by SCLAID and NLADA to recognize bar associations that have provided extraordinary efforts to improve legal services availability to poor persons in their communities.⁷

This article will trace the development of legal aid societies and volunteer attorney programs from the early 1900s through the beginning of federal funding in the 1960s and 1970s. It will chart the changes in federal funding in the 1980s and the development of private attorney involvement programs throughout the state. It will also trace the development of the MSBA LAD Committee, the Minnesota Justice Foundation and law school clinical programs. In conclusion, the article will address the current unmet need for indigent Minnesotans with civil cases and the need for continued development of programs to address those legal needs.

I. Development of Civil Legal Services Programs and Volunteer Attorney Programs: Early 1900s to 1974.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional work load, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid of-

6. *Id.*

7. Letter from Dorothy Jackson for ABA Standing Committee on Legal Aid and Indigent Defendants to Roger Stageberg, President, Minnesota State Bar Association 1 (July 20, 1994) (on file with author).

fices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.⁸

Attorneys traditionally have accepted cases for low-income clients out of a sense of professional obligation to society. Early in the 1900s, Minnesota attorneys took steps to organize the efforts of lawyers delivering legal services to low-income persons.

A. *St. Paul*

The earliest organized legal services in Minnesota began in the metropolitan area. In 1909, the Legal Aid Bureau was established by the Associated Charities of St. Paul and was the forerunner of SMRLS.⁹ In a report to the Board of Directors in Spring of 1913, it was noted that the free legal aid department consisted of one attorney and primarily addressed problems related to wage claims, loan sharks and domestic issues. The first attorney to occupy this single attorney department was Kenneth G. McManigal. He was paid an initial salary of \$1,000 a year.¹⁰

One of the early free legal aid department attorneys was Helen Hinton (1927-30). She was the only woman to graduate from the 1925 class of the University of Minnesota Law School. She handled many of the loan shark cases. In some cases, by the time the debtors sought out legal aid they had paid the principle of the loan six or seven times over. To find a more permanent solution for clients, Ms. Hinton worked with others for the passage of the Small Loans Act in Minnesota.¹¹

B. *Minneapolis*

In 1902, a Committee on Legislation and Legal Aid was established in Minneapolis by the Family Welfare Association. It was designed, in part, to provide pro bono legal advice, but chiefly to promote legislative reform. In 1905, City Attorney Daniel Fish urged the Committee to establish funding for a Legal Aid Department, but unfortunately received only one contribution - his own.

8. MINN. RULES OF PROFESSIONAL CONDUCT Rule 6.1 comment (1985).

9. Minnesota Legal Services Coalition, Proposal for Funding from the Lawyer Trust Account Grant Program for the 1994-1995 Funding Cycle (Apr. 15, 1994), at 6 [hereinafter *The Coalition*].

10. SMRLS 75 YEAR ANNIVERSARY CELEBRATION brochure (Sept. 19, 1987), at 2.

11. Ann Bartsch, Civil Legal Aid to the Disadvantaged in Minnesota, 1912-1983, in MINNESOTA STATE BAR ASSOCIATION, THE FIRST 100 YEARS . . . 252 (1983) [hereinafter *THE FIRST 100 YEARS*].

In 1907, the Committee sponsored legislation, requiring charitable organizations to account for their funds.¹²

The earliest legal services work in Minneapolis was provided by attorneys on a pro bono basis. In 1909, a male and female attorney were added to the list of attorneys to whom pro bono cases could be referred. In 1910, Josephine Schain was appointed as a part-time attorney at a salary of \$40 a month. In 1913, funding was expanded and John Benson was hired at a salary of \$1000 per year. Mr. Benson went on to found the firm of Faegre & Benson. He was succeeded by William Hodson, who in 1917 drafted and successfully lobbied for passage of the Children's Code of Minnesota.¹³

In the 1920s, in an early example of joint efforts, the Minneapolis and St. Paul Legal Aid offices successfully lobbied for the passage of the Small Loans Act to combat loan sharking. Other legal aid cases in Minneapolis included family, landlord-tenant, wage claims and unemployment issues.¹⁴

C. Duluth

In 1952, concerned judges, attorneys and community leaders founded the Legal Aid Service of Duluth, the first organized civil legal assistance. From 1952 to 1970 the program was staffed by one attorney, Jack L. Litman, who went on to become judge of the Sixth District in Duluth.¹⁵

D. Greater Minnesota

Outside of the Twin Cities and Duluth before the 1970s, free legal services to the poor were provided in large part by the individual, volunteer efforts of Minnesota attorneys. "In some towns (like Montevideo, Winona, Mankato, Moorhead, Fergus Falls and Detroit Lakes), local attorneys organized their own volunteer programs for local clients who could not afford to pay for services."¹⁶ In other areas, individual lawyers simply represented indigent persons without a fee out of their own concerns for justice. In the 1940s and 1950s, the organization of the Lawyer Referral Services was another response of the legal profession to the need for attorneys' services among clients who were unable to pay a full fee.¹⁷

12. Memorandum from Jeremy Lane, Executive Director, Mid-Minnesota Legal Assistance (MMLA), to author (Oct. 13, 1994) (regarding early history of MMLA) (on file with author).

13. *Id.*

14. *Id.*

15. THE FIRST 100 YEARS, *supra* note 11, at 252.

16. *Id.* at 252-53.

17. *Id.* at 253.

E. OEO funding for Leech Lake Reservation, Minneapolis and St. Paul

"[B]y the 1960s it was apparent that private, charitable legal aid could not meet the need."¹⁸ In 1966, the Office of Economic Opportunity (OEO) provided the first federal funding for legal aid. These funds allowed the Legal Aid Society of Minneapolis to open neighborhood offices, and led to the establishment of Legal Aid of Ramsey County (LARC) (successor to St. Paul Legal Aid Bureau). In 1967, OEO funds allowed the establishment of the Leech Lake Reservation Legal Services Project.¹⁹

F. Legal Advice Clinics²⁰

About the same time, a very important development in the history of pro bono work occurred in Minneapolis.

Legal Advice Clinic (LAC) was established in 1966 to advise and represent poor people with legal problems through volunteer attorneys. It was organized by a group of twenty-eight lawyers to coordinate and focus their pro bono efforts. LAC grew in size and respect until in 1970 an affiliation agreement was signed with the Hennepin County Bar Association which provided that LAC was to be "responsible for creating and implementing all Hennepin County Bar Association activities and programs relating to legal representation of the poor." It thus became the official pro bono arm of Hennepin County Bar Association.²¹

G. Ramsey County Volunteer Attorney Program

In Ramsey County, clients were referred to volunteer attorneys for pro bono work by staff at the Legal Assistance of Ramsey County (LARC) office that was established in 1966.²² In the early years, attorneys met clients at neighborhood offices. In about 1974, the Legal Aid Committee of the Ramsey County Bar and LARC staff worked together to make program improvements to make it easier for volunteers to participate. The attorneys began to meet clients at the LARC office. They were assisted by staff members who were allocated more time to administer the program. The col-

18. The Coalition, *supra* note 9, at 6.

19. *Id.*

20. Legal Advice Clinics changed its name to Volunteer Lawyers Network, Ltd. in October of 1994.

21. Memorandum from Candee Goodman, Executive Director of LAC, to the Executive Committee of LAC (Dec. 10, 1992) (on file with author).

22. Interview with Pat Brummer, SMRLS/Ramsey County Volunteer Attorney Program Coordinator, and Sylvia Lane, SMRLS Comptroller, in St. Paul, MN (Sept. 12, 1994).

laboration with the Ramsey County Bar Association and the program improvements caused the number of volunteers to increase from about thirty in the early 1970s to about one hundred in 1975.²³

H. Legal Assistance of Minnesota

In May, 1972, Legal Assistance of Minnesota (LAM) was incorporated by a group representing a cross-section of attorneys in government and private legal practice, including the MSBA.²⁴ The purpose of the organization was to promote the formation of civil legal assistance organizations in Minnesota by taking advantage of a legal services funding option under *Title IV-a* (later XX) of the Social Security Act.²⁵ The option allowed local counties to use some of their social services allocation to provide civil legal services to low-income persons.²⁶ Title IV-a required a one quarter local funding match.²⁷

From 1972 to 1977, LAM staff members promoted legal services funding statewide and administered the MSBA lawyer referral system.²⁸ LAM helped raise money for the pre-existing Legal Aid Service of Duluth, as well as new civil legal assistance programs in Washington, Dakota and Olmstead Counties.²⁹ LAM also played a role in the initiation of legal services in northern St. Louis County, Anoka County and counties surrounding St. Cloud.³⁰ LAM closed as a result of the increased involvement of LSC in funding local civil legal assistance programs through regionalized plans.³¹

II. Impact of Federal Legislation Establishing the National Legal Services Corporation Act

On July 25, 1974, President Nixon signed the Legal Services Corporation (LSC) Act.³² The purpose of the LSC Act was to expand access to civil legal services for low-income persons throughout the country, and, in Minnesota, throughout the eighty-seven

23. Telephone Interview with Dan Cole, early member of Ramsey County Bar Association Legal Aid Committee (Oct. 14, 1994).

24. Letter from Michael J. Feeney, Administrator of LAM, to F. Kelton Gage, President, MSBA (Sept. 8, 1977) (on file with author).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 1-2.

29. *Id.* at 1.

30. *Id.*

31. *Id.*

32. Legal Services Corporation Act, Pub. L. No. 93-355, 88 Stat. 378 (1974) (codified as amended at 42 U.S.C.A. § 2996 (1977)).

counties. This was accomplished in Minnesota in the late 1970s by the expansion, reconfiguration and development of six programs that now make up the Minnesota Legal Service Coalition (The Coalition). These programs are currently known as Southern Minnesota Regional Legal Services, (SMRLS, central office in St. Paul), Mid-Minnesota Legal Assistance (central office in Minneapolis), Anishinabe Legal Services (central office in Cass Lake), Legal Aid Services of Northeastern Minnesota (central office in Duluth), Legal Services of Northwest Minnesota (central office in Moorhead) and Judicare of Anoka County (office in Blaine).³³

Two of the six Legal Services Coalition programs are judicare programs, providing legal services through a combination of staff attorneys and contracted private attorneys.

Judicare of Anoka County, Inc. was established in 1975 through a joint effort of the Anoka County Bar Association and the

33. The Coalition, *supra* note 9, at 7-8.

LSC's short-term goal was to expand legal services throughout Minnesota by making the equivalent of two attorneys available for every 10,000 poor persons in all areas of the state. This goal was known as the "minimum access" plan. To meet this expansion goal, LSC representatives held public hearings and consulted with legislators, local bar associations, community groups and legal services programs. Based on information gathered at these hearings and meetings, LSC awarded expansion funds to three existing local programs — LASM [Legal Aid Society of Minneapolis], LARC [Legal Assistance of Ramsey County] and the Legal Aid Service of Duluth (LASD) — which had demonstrated a capacity to deliver legal services to poor persons effectively. LARC expanded to become Southern Minnesota Regional Legal Services (SMRLS) in 1977, covering 33 counties in southern Minnesota. Central Minnesota Legal Services (CMLS) was also formed in 1977 when LASM joined with newly created programs in rural areas to serve 20 counties throughout central Minnesota. [In 1981, responding to changing needs, the legal services providers which comprised CMLS recombined to form Mid-Minnesota Legal Assistance (MMLA), which is now the primary service provider in central Minnesota. CMLS remains the LSC grantee, providing services through a reimbursement contract with MMLA.]

The Legal Aid Service of Northeastern Minnesota (LASNEM) grew out of LASD and received funds to expand services to 11 counties in the sparsely populated Arrowhead region. The Leech Lake Reservation Project also expanded to include the White Earth and Red Lake Reservations, reincorporating as Anishinabe Legal Services.

Northwestern Minnesota, largely rural, sparsely populated, and without an existing legal services program, formed a judicare program, Northwest Minnesota Legal Services (NMLS), in 1977. The program changed its name in 1991 to Legal Services of Northwest Minnesota (LSNM). Judicare of Anoka County was also formed during this period, largely through the efforts of the local bar association.

These six programs together constitute the programs selected by LSC to receive permanent federal funding to provide geographic coverage to the entire state of Minnesota.

client community.³⁴ Judicare of Anoka County, Inc. provides free legal services to low-income residents of Anoka County in civil matters through a combination of staff attorneys and contract attorneys.³⁵ The contract attorneys provide services free to clients and bill Judicare of Anoka County on a reduced fee basis (currently \$40.00 an hour).³⁶ Contract attorneys are paid for the first eight hours in a non-family law case, ten hours in a dissolution case without custody issues, and fifteen hours in custody cases.³⁷ The next five hours are provided pro bono by the contract attorneys.³⁸ If the case requires even more hours, the contract attorneys may apply for excess fees.³⁹

Additionally, each year the Anoka County Bar Association passes a resolution in support of pro bono efforts. Members of the Bar voluntarily pledge five hours of pro bono services or \$200 in support of Judicare of Anoka County, Inc. Participation by members of the Bar is quite high.⁴⁰

Legal Services of Northwest Minnesota was incorporated on November 23, 1976.⁴¹ LSNM delivers legal services through a combination of in-house legal staff and private judicare attorneys paid \$35.00 per hour with set maximum total fees for certain types of cases.⁴² LSNM provides legal services to twenty-two counties in the Northwest quadrant of Minnesota.⁴³

The four other coalition members, MMLA, SMRLS, LASNEM and Anishinabe Legal Services, use a staff attorney service delivery model housed in central or branch offices rather than a judicare model.⁴⁴

The net result of passage of the Legal Services Corporation Act was the development of legal services programs providing legal services to low-income persons in all eighty-seven counties in Minnesota by the six Minnesota Legal Services Coalition member programs. Additionally, three counties have non-LSC, locally funded, civil legal services staffed programs. Those programs are Legal

34. Memorandum from Chris Haugen-Munns, Legal Assistant, Judicare of Anoka County, to author (Sept. 26, 1994) (on file with author).

35. *Id.*

36. *Id.*

37. Telephone Interview with Chris Haugen-Munns, Legal Assistant, Judicare of Anoka County (Oct. 15, 1994).

38. *Id.*

39. *Id.*

40. *Id.*

41. LEGAL SERVICES OF NORTHWEST MINNESOTA, LEGAL SERVICES OF NORTHWEST MINNESOTA PROGRAM OVERVIEW 3 (Dec. 1993) (on file with author).

42. *Id.* at 2, 6.

43. *Id.* at 1.

44. *Id.* at 12.

Assistance of Dakota County, Ltd. (LADC), Legal Assistance of Olmstead County (LAOC), and Legal Assistance of Washington County (LAWC).⁴⁵ These three single-county programs received some assistance from LAM with initial funding efforts in the 1970s.⁴⁶

SMRLS also provides legal services in these counties and cooperative efforts are made between the programs with "client and case referral, volunteer attorney programs, support for complex litigation, legislative representation, training and client materials."⁴⁷ LAOC, LAWC and LADC emphasize family law cases and have established volunteer attorney programs in their counties.⁴⁸

Other non-LSC funded organizations provide civil legal services to low-income persons. Examples include the following. Centro Legal, Inc. is a non-profit corporation that provides free civil legal assistance to low-income persons and legal services on a sliding fee basis to persons whose income exceeds 125% of poverty.⁴⁹ It was established in 1981 in partnership with SMRLS to diminish the impact on Hispanic clients of reduced federal funding for legal services.⁵⁰ Legal Assistance to Minnesota Prisoners (LAMP) provides civil legal services to inmates at Shakopee, Stillwater, St. Cloud and Sandstone prisons.⁵¹ Lao Family Community of Minnesota, Inc. has one full-time attorney.

III. The Impact of the Reagan Administration Proposal to Abolish the Legal Services Corporation and of the Legal Services Corporation's Private Attorney Involvement Requirements

In March, 1981 the Reagan Administration proposed the abolition of the Legal Services Corporation.⁵² MSBA leaders and bar leaders around the country lobbied Congress not to do so. The proposal to abolish the Legal Service Corporation had a significant impact in Minnesota. At the MSBA Convention in Duluth in June 1981, MSBA President Clinton Schroeder directed the formation of a special bar committee to deal with the imminent LSC funding cuts. Gerald Regnier of St. Paul and Stephen Rolfsrud of Mankato

45. MINNESOTA LEGAL SERVICES OFFICE AND STAFF DIRECTORY 27-28 (Nov. 1993) (on file with author).

46. Letter from Michael J. Feeney, *supra* note 24, at 1.

47. The Coalition, *supra* note 9, at 48.

48. *Id.* at 50.

49. *Id.*

50. *Id.*

51. *Id.* at 49.

52. Ann Bartsch, Minnesota Progress on Legal Services to the Disadvantaged: March 1981-Present 1 (Feb. 1984) (unpublished manuscript, on file with the MSBA).

were named as co-chairs of the Committee on Legal Assistance to the Disadvantaged (LAD Committee). LAD was charged with seeking funding to keep local legal services offices open, substantially increasing pro bono services by private attorneys in Minnesota through formation and support of local volunteer programs and establishing a permanent resource base as a replacement for lost federal dollars.⁵³

On October 2, 1981 the LSC board adopted a policy that LSC grantees make a substantial amount of funds available to "provide opportunity for the involvement of private attorneys in the delivery of legal assistance to eligible clients." "Substantial amount" was defined as ten percent of annualized basic field grants.⁵⁴ Ten percent was increased to 12.5 percent and remains at that level today.⁵⁵ This regulation, among others, is currently under review.⁵⁶

In December, 1981, Congress continued federal funding of the Legal Services Corporation for fiscal year 1982, but with a twenty-five percent cut in funds.⁵⁷ Minnesota legal services office began staff reductions and office closings throughout the state.⁵⁸

The impact of major LSC cuts and private attorney involvement requirements was to mobilize the MSBA, legal services offices and local bar associations to organize volunteer attorney programs to provide supplemental legal assistance in every county in Minnesota.⁵⁹ Most new volunteer programs were organized out of existing legal services program (central and branch offices), with the program taking responsibility for intake, administration and referral of cases to volunteers.⁶⁰ Local bar associations assisted in recruitment of volunteer attorneys.⁶¹

In early 1981, William Reese Smith, President of the ABA, announced a competition for grants to implement new private bar involvement programs.⁶² Legal Aid Service of Northeastern Minnesota and the 11th District Bar Association submitted a joint proposal that was one of five in the nation to be funded.⁶³ In April, 1981, the volunteer program now known as Arrowhead Lawyers

53. *Id.*

54. *Id.*

55. 45 C.F.R. § 1614.1 (1993).

56. Telephone Interview with Nancy Kleeman, Director of MSBA Volunteer Legal Services (Oct. 13, 1994).

57. Bartsch, *supra* note 52, at 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Telephone Interview with Patty Murto, Executive Director of Arrowhead Lawyers Care (Sept. 26, 1994).

63. *Id.*

Care was established. In 1982, the 11th District Bar Association won the Harrison Tweed Award for establishing this program,⁶⁴ a free standing volunteer program, serving clients in Lake, Itasca, Cook, Carlton and St. Louis counties.⁶⁵ Although Arrowhead Lawyers Care is not part of the local legal services office, the program staff work in close cooperation with each other.⁶⁶ Started with twenty-three volunteers, the program now numbers over 290.⁶⁷

In 1981 the MSBA became one of the first state bar associations to hire a full-time attorney to coordinate statewide efforts to increase access of civil legal services to low-income Minnesotans.⁶⁸ Jointly the MSBA and the six Minnesota Legal Services Coalition programs hired the first MSBA Director of Volunteer Legal Services, Ann Bartsch.⁶⁹ In 1981 she worked on creation of the first comprehensive Interest on Lawyers Trust Account (IOLTA) program in the country; passage by the legislature of a filing fee surcharge to support legal services; and, creation of a network of local volunteer attorney programs serving all eighty-seven counties.⁷⁰ She also established a separate non-profit corporation to secure funding and provide technical support for volunteer attorney programs.⁷¹ One of the first technical support efforts was the publication and distribution of the Poverty Law Desk Manual.⁷²

IV. A Decade of Growth, Innovations in Pro Bono Delivery Systems: 1984 to 1994

Lawyers in Minnesota have a long history of volunteering, but innovations over the past decade have made it progressively easier for them to volunteer. As a result of MSBA and local program efforts, volunteer attorneys now have access to a wide array of technical supportive services, such as free Continuing Legal Education (CLE) courses, sample pleadings, substantive legal practice materials, mentor attorneys and malpractice insurance.

The MBSA and the Coalition continue to fund a Director of Volunteer Legal Services position. Nancy Kleeman has served in that position since 1984.⁷³

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Harrison Tweed Award, *supra* note 3, at 3.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

Existence of this position ensures that efforts to improve access to civil legal services for low-income Minnesotans are well coordinated and that significant support is provided to volunteer attorney programs throughout Minnesota.⁷⁴

The Director of Volunteer Legal Services works with all local volunteer program coordinators, providing technical assistance, arranging regular coordinator meetings and training programs, and coordinating the distribution of the volunteer attorney desk manual, as well as other materials of assistance, to volunteer and legal services staff attorneys.⁷⁵ She also attends all meetings of the directors of the Coalition and provides technical assistance as needed to legal services staff members.⁷⁶

In addition, she provides support to the MSBA and the LAD Committee in continuing efforts to assure access to legal services for low-income Minnesotans. The MSBA and LAD Committee have worked toward this goal both by promoting funding for legal services at the federal and state levels and by encouraging pro bono work by attorneys.⁷⁷ The work of the MSBA and the Coalition, as well as support from the Minnesota legislature, foundations, United Way, law firms, corporations, individual attorneys and others has resulted in less reliance on LSC funding: less than thirty percent of the 1994 Coalition budget represents LSC dollars.⁷⁸

In 1990, the LAD Committee made an extensive analysis of mandatory pro bono.⁷⁹ The Committee decided it was not appropriate to recommend mandatory pro bono without extensive study, which was beyond the resources of the Committee. Instead, the committee made twelve recommendations to the MSBA to increase pro bono activities and support for legal services.⁸⁰ The twelve recommendations included: adoption by MSBA of a fifty hour pro bono legal service per year aspirational standard; encouragement by the MSBA of law school placement office practices requiring employers to provide information on pro bono policies; development of new MSBA awards recognizing legal services staff and law student volunteers; encouragement by MSBA of law firm policies on pro bono work that allow pro bono hours to be credited toward total billable hours; exploration by MSBA, with CLE providers, of possible re-

74. *Legal Assistance to the Disadvantaged: Summary of Recommendations*, BENCH & BAR OF MINNESOTA, May-June 1990, at 33 [hereinafter *LAD: Summary of Recommendations*].

75. Harrison Tweed Award, *supra* note 3, at 3.

76. *Id.*

77. *Id.*

78. Cover letter to The Coalition, *supra* note 9, at 3.

79. Harrison Tweed Award, *supra* note 3, at 4.

80. *LAD: Summary of Recommendations*, *supra* note 74, at 31, 36-38.

duced rates or scholarships for legal services staff and volunteer attorneys; and recommendation by the MSBA to Minnesota Supreme Court that attorneys licensed to practice in Minnesota be required to report pro bono legal services and financial contributions pursuant to the aspirational standard.⁸¹ All of the twelve recommendations except mandatory reporting have been implemented.⁸²

In 1991, the MSBA began to give annual awards to legal services staff and volunteer law students.⁸³ In 1992 the LAD Committee proposed, and MSBA adopted, a model pro bono policy for private law firms.⁸⁴ The MSBA disseminated the policy to law firms; MSBA staff set up meetings with legal services providers and law firm pro bono contacts to coordinate efforts. The meetings resulted in the publication of the first edition of a Directory of Pro Bono Opportunities for Attorneys by the MSBA and the establishment of the Law Firm Pro Bono Round Table Case Placement System. Eight Minnesota law firms signed up for the ABA Pro Bono Challenge.⁸⁵

In January, 1994, the MSBA House of Delegates approved a Model Pro Bono Policy and Procedures for Government Attorneys.⁸⁶ The policy recognizes the importance of enabling government attorneys to do pro bono work, while recognizing the unique constraints they face.⁸⁷

LAD efforts continue. In February, 1994, the LAD Committee approved a strategy through which efforts will be made to educate lawyers about the overwhelming unmet need for civil legal services in Minnesota; attempt to reach consensus on lawyers' obligations to meet that need; and to develop recommendations to increase access to legal services.⁸⁸ These recommendations may include proposing revisions to Minnesota Rule 6.1 of Professional Responsibility, increasing volunteer services by more attorneys, requesting increased financial support for legal services by attorneys, and requesting increased state funding for civil legal services.⁸⁹

In addition to innovations initiated by the MSBA and LAD Committee, local volunteer attorney program coordinators have developed many approaches to make it easier for volunteers to participate. A few examples will follow.

81. *Id.*

82. Harrison Tweed Award, *supra* note 3, at 4.

83. *Id.* at 5.

84. *Id.*

85. *Id.*

86. *Id.* at 6.

87. *Id.*

88. *Id.* at 7.

89. *Id.*

The Ramsey County Volunteer Attorney Program grew from 200 members in 1984 to 503 active members in 1994. Attorneys may meet clients at the SMRLS office on Tuesday evenings or accept direct referrals at the attorney's office.⁹⁰ (Long term volunteer attorneys know that Pat Brummer has provided volunteers with homemade cookies every Tuesday night for a decade!) Twice a year there is a 3M Company volunteer night and twice a year, a Briggs & Morgan volunteer night.⁹¹ Volunteers in the Attorney General's office provide telephone advice only;⁹² interpreters are provided for persons who need them.⁹³

Attorneys may choose to volunteer for the Noon Hour Homeless Project (once a month at Dorothy Day Center), Family Law Mediation Project with Mediation Center or Asylum Pro Bono Project (in cooperation with Minnesota Advocates for Human Rights).⁹⁴ A face to face family law mentor program is expected to begin November, 1994. This project will match a newly admitted attorney with an experienced attorney for mentoring.⁹⁵

P.B.I. Coordinator Mary Stoos in Winona already has established a mentoring program for new attorneys, matching them with experienced family law practitioners.⁹⁶

Staff in the St. Cloud Area Legal Services office provide periodic training sessions on dissolution practice.⁹⁷ These sessions are useful in recruiting new attorneys because they provide the information needed to begin practicing family law as well as CLE credit.⁹⁸

A unique program exists in the Western Minnesota Legal Services office of MMLA in Willmar.⁹⁹ Legal Services attorneys are also volunteer attorneys, accepting dissolution cases without children (to avoid conflicts of interest). Interviews are scheduled after work hours.¹⁰⁰

90. Memorandum from Pat Brummer, Ramsey County Volunteer Attorney Program Coordinator, to author (Oct. 12, 1994).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Telephone Interview with Nancy Kleeman, Director of MSBA Volunteer Services (Oct. 13, 1994) (on file with author).

97. Memorandum from Randall Smith, Executive Director, CMLS, to author (Oct. 13, 1994) (on file with author).

98. *Id.*

99. Memorandum from Judy King, Volunteer Attorney Program Coordinator, Western Minnesota Legal Services, to author (Oct. 13, 1994) (on file with author).

100. *Id.*

Legal Advice Clinics (LAC)¹⁰¹ is the oldest and largest volunteer attorney program in Minnesota. LAC has fifteen neighborhood sites where volunteers meet clients (579 volunteers provided pro bono services in the 1993-94 fiscal year).¹⁰² LAC staff have developed many innovations to make it easier for lawyers and law firms to participate. LAC staff allow attorneys to focus efforts on particular case types. Five law firms assign attorneys to unlawful detainer court.¹⁰³ Two federal court partnerships have been established to provide services to low-income clients with adversary claims in Bankruptcy Court or for low-income clients who have filed discrimination or prisoners' rights cases in U.S. District Courts.¹⁰⁴

Law firms may adopt a clinic, with LAC staff providing screened clients with the specific types of cases which the law firm is willing to handle. A summer associate program matches law students with individual lawyers. Last year, twelve firms participated and 100 clients were served.¹⁰⁵

LAC has made the unmet needs in family law its major focus, setting up training programs, mentor programs, and matching two firms willing to handle order for protection cases with shelters in Hennepin County.¹⁰⁶

A unique program was established in Minneapolis to address the large unmet need for legal services in the family law area and utilize services of underemployed or unemployed recent law graduates. The Minneapolis Legal Aid Society Volunteer Family Law Program was created in October, 1984.¹⁰⁷ An average of thirty-five attorneys participate in the project.¹⁰⁸ Most volunteers are recent law graduates who have not yet secured full-time employment.¹⁰⁹ They receive training, malpractice insurance and supervision by the managing attorney of the family law unit.¹¹⁰

Similarly, in the summer of 1993, Minneapolis Legal Aid Society developed a project for volunteer attorneys targeted at housing issues.¹¹¹ The project was developed with funding from the Henne-

101. LAC changed its name to Volunteer Lawyers Network, Ltd. in October, 1994.

102. Memorandum from Candee Goodman, Executive Director, Legal Advice Clinics, to author (Oct. 14, 1994) (on file with author).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. LEGAL AID SOCIETY OF MINNEAPOLIS, INC., VOLUNTEER FAMILY LAW PROGRAM PROJECT DESCRIPTION.

108. *Id.*

109. *Id.*

110. *Id.*

111. LEGAL AID SOCIETY OF MINNEAPOLIS, INC., VOLUNTEER HOUSING LAW PROJECT DESCRIPTION.

pin County Family Homelessness Prevention and Assistance Grant.¹¹² Free legal assistance is provided by approximately twenty volunteer attorneys to low-income persons in an effort to prevent homelessness in Hennepin County. Experienced housing law practitioners serve as mentors. The Legal Aid Society provides malpractice insurance, back-up support, access to computers, sample pleadings and training.¹¹³

IV. Contributions by Law Students

A. Minnesota Justice Foundation

The Minnesota Justice Foundation (MJF) was founded in 1981 by University of Minnesota Law School students.¹¹⁴ MJF is a non-profit organization of law students and attorneys that encourages its members and the legal community to fulfill their professional obligation to serve unrepresented low-income persons. MJF was conceived in response to the cutbacks in legal services in the 1980s.¹¹⁵ The founders believed that law students should become more involved in the struggle to change the system and provide legal services to those otherwise without access.¹¹⁶

MJF developed its summer clerkship program in 1983, expanded to Hamline and William Mitchell law schools in 1984, and hired its first full-time attorney executive director in 1985.¹¹⁷ MJF students helped establish LRAP - MN, a loan repayment assistance program to Minnesota graduates entering low-paying public interest careers, in conjunction with MSBA and the three Minnesota law schools.¹¹⁸ MJF students provide significant pro bono service by assisting volunteer attorneys, donating their time to free legal clinics, assisting with legal research and writing, and volunteering for an extended period of time at a public interest office. In 1994, MJF had 750 student and attorney members and offered twenty-six summer clerkships to Minnesota law students.¹¹⁹ In the September 1, 1993 through August 31, 1994 program year, 175 students donated 5,390 hours of legal research and other types of assistance to 203 lawyers representing 2,162 clients.¹²⁰

112. *Id.*

113. *Id.*

114. Letter from Theresa Murray Hughes, Executive Director, Minnesota Justice Foundation, to author (July 7, 1994) (outlining history of MJF) (on file with author).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* Telephone Interview with Dawn Trnka, Pro Bono Projects Coordinator, Minnesota Justice Foundation (Oct. 14, 1994) (Dawn Trnka provided the statistical

In addition to its direct service programs, MJF holds educational forums at the three law schools on issues of concern to law students and lawyers.¹²¹ "The organization also co-sponsors (along with the three law schools) the Annual Public Interest Career Program and the Spring Public Interest Career Fair. Most recently, MJF, the University of Minnesota Law School and William Mitchell College of Law have collaborated to launch the Public Interest Law Consortium (PILC) in an effort to bring community service into the classroom."¹²² The PILC project, beginning Fall 1994, hopes to involve thirty-two law students in its first year of operation. "The project was funded with a grant from the Corporation for National and Community Service, President Clinton's service initiative."¹²³

B. Law School Clinical Programs

All three law schools in Minnesota have long histories of service by law students to low-income persons under the supervision of clinical faculty members.

The University of Minnesota Law School was a pioneer in clinical legal education. "As early as 1913, students were required to observe and assist attorneys 15 afternoons per year at the Minneapolis Legal Aid Society in providing legal services to indigent residents of the city. Some 50 years later, in 1965-66, when students first received academic credit for their clinical activities, this program was still in existence," although smaller in scope.¹²⁴ In 1969, the first clinical faculty member was hired.¹²⁵

Currently, the University of Minnesota offers fourteen clinics in a wide variety of civil and criminal areas taught by five permanent clinical faculty members, two adjunct faculty members funded by the State Public Defender, two directors who teach in the clinic part-time and one faculty member funded by the U.S. Department of Education.¹²⁶

William Mitchell College of Law has offered clinical programs in which students represent low-income persons since the early

updates. Statistics for 1993-1994 are incomplete since some summer hours are outstanding.)

121. Letter from Theresa Murray Hughes, *supra* note 114.

122. *Id.*

123. *Id.*

124. University of Minnesota Law School 1989 Grant Application to the Department of Education (in requesting additional funds for the expansion of the Civil Practice Clinic, the grant application outlines the history of the law school's clinics).

125. *Id.*

126. Letter from Stephen F. Befort, Professor of Law and Clinic Director, University of Minnesota Law School, to author (Sept. 27, 1994) (on file with author).

1970s.¹²⁷ The early clinics allowed students to represent clients under the supervision of both in-house and adjunct faculty members through the offices of Legal Assistance of Ramsey County, Legal Aid Society of Minneapolis and the Ramsey County Public Defender.¹²⁸ Since the early 1970s, William Mitchell went on to develop extensive clinical education, detailed in a 1983 *William Mitchell Law Review* article by Professor Roger Haydock.¹²⁹

William Mitchell currently offers a wide array of clinical courses, taught by full-time faculty members as well as experienced attorneys and judges in the community, who serve as adjunct professors.¹³⁰

Hamline Law School's clinical program was started by Professor Dick Oakes in the 1977-1978 academic year.¹³¹ The first cases included criminal defense in Hennepin County, juvenile representation in Ramsey County and elder law.¹³² Over the years, clinics were also offered in civil commitment defense and public interest advocacy with an environmental case focus.¹³³

Currently, three in-house clinics exist at Hamline: a Child Advocacy Clinic, a Family Law/Mediation Clinic and a General Practice Clinic which focuses on public interest litigation, criminal defense, unemployment compensation and immigration.¹³⁴ The Hamline clinic is staffed by three full-time faculty members, an adjunct faculty member and rotating members of the faculty.¹³⁵ Hamline also has an extensive practicum program which places students in a variety of legal settings in the community, serving both public and private interests.¹³⁶

In *Clinical Legal Education: The History and Development of a Law Clinic*, Roger Haydock provided a long list of educational objectives for clinical legal education.¹³⁷ Those educational goals included developing competencies in lawyering skills; providing pro bono representation to clients unable to afford lawyers; addressing

127. Roger S. Haydock, *Clinical Legal Education: The History and Development of a Law Clinic*, 9 WM. MITCHELL L. REV. 101, 106 (1983).

128. *Id.* at 106-07.

129. *Id.* at 105-18.

130. WILLIAM MITCHELL COLLEGE OF LAW, CLINIC COURSE OFFERINGS BROCHURES, SUMMER 1994, FALL 1994.

131. Interview with Professor Dick Oakes, the first Dean of Hamline University School of Law, in St. Paul, MN (Sept. 29, 1994).

132. *Id.*

133. *Id.*

134. HAMLINE UNIVERSITY SCHOOL OF LAW, REGISTRATION AND SCHEDULE BOOKS, FALL SEMESTER, 1994, SPRING SEMESTER, 1995.

135. *Id.*

136. *Id.*

137. Haydock, *supra* note 127, at 120.

complex issues involved in social justice; helping students become sensitive to their responsibility to serve public and private interests; and helping students develop a coherent and personalized system of ethical conduct.¹³⁸ To the extent law schools establish and meet educational objectives such as these, law students will develop an understanding of the unmet need for legal services in the community and will further develop the skills necessary to help meet that need as volunteer attorneys.

The April 8, 1994 Legal Education and Pro Bono Conference, which is the subject of this Symposium, raised the question of what role Minnesota law schools should play in shaping an ethic of pro bono service among attorneys. That issue will remain under discussion by the Law School Initiatives Subcommittee of LAD.¹³⁹ Volunteer attorneys and faculty members from the three law schools serve on the Subcommittee along with representatives from the MSBA, MJF and volunteer attorney programs.

Conclusion

Attorneys in Minnesota have created a massive network of free legal assistance to low-income persons over the past ninety years. Jeremy Lane, Executive Director of Mid-Minnesota Legal Assistance, estimated that the combination of legal services offices, judicare programs and volunteer attorney programs represented about 42,000 people in 1993.¹⁴⁰ Unfortunately, he estimates the actual client need to be much greater than that.¹⁴¹ Using the 1990 census figures and an ABA survey of the amount of legal need among low-income persons, Lane estimated that 330,000 Minnesotans, who are low-income, need legal help each year.¹⁴² 42,000 receive representation while 288,000 are unrepresented.¹⁴³ Of those 288,000 unrepresented low-income persons, an estimated 200,000 are hurt by the lack of representation.¹⁴⁴

From October 19 to November 13, 1987, the MSBA LAD Committee conducted a survey to determine the unmet need among low-

138. *Id.*

139. Minutes of the Legal Assistance to Disadvantaged Committee of the MSBA (Sept. 23, 1994).

140. Jeremy Lane, Remarks at A *Working Symposium, Legal Education and Pro Bono*, William Mitchell College of Law (Apr. 8, 1994).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

income persons for family law legal assistance.¹⁴⁵ The survey results indicated that an estimated 10,000 income eligible persons each year are unable to gain access to family law representation.¹⁴⁶ The survey was based upon interviews with everyone who called the legal services offices and volunteer attorney programs and asked for family law assistance during the survey period.¹⁴⁷ During that period, seventy-one percent of the callers for family law assistance were women.¹⁴⁸ This is close to the ratio of men to women in the poverty population.¹⁴⁹ The survey results indicated that the lack of adequate resources for representation of low-income persons with family law cases has a disproportionate impact upon women.¹⁵⁰

Similarly, the Minnesota Supreme Court Task Force for Gender Fairness in the Courts made, among many others, the following finding and recommendations.

Findings:

1. It is extremely difficult for poor people in Minnesota to obtain legal representation in family law matters.
2. The inability to obtain counsel affects women more severely than men.
3. The reluctance of judges to award reasonable temporary attorney fees and costs in family law cases prejudices the economically dependent spouse by making it impossible for that spouse in many cases to pursue action.

Recommendations:

1. State resources should be made available for the funding of legal representation for poor people in family law matters.
2. Whenever possible judges should award temporary attorney fees and costs to the economically dependent spouse in an amount that is sufficient to allow that spouse to effectively pursue relief in family court.¹⁵¹

The Supreme Court Task Force on Racial Bias in the Judicial System found that the lack of adequate legal resources for civil cases for low-income persons had a disproportionate impact on persons of

145. Lise L. Schmidt & Renee Monson, Minnesota State Bar Association LAD Committee, *Family Law: A Survey of the Unmet Need for Low-Income Legal Assistance*, v-vi (Feb. 1989).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *See id.*

151. *Minnesota Supreme Court Task Force for Gender Fairness in the Courts, Final Report*, 15 WM. MITCHELL L. REV. 827, 868 (1989).

color in Minnesota.¹⁵² In Portion IV of the report (Access to representation and interaction, and general civil process), the Task Force made, among others, the following findings and recommendation: Findings:

1. People of color experience a disproportionately large number of civil legal problems due to racial discrimination and poverty.
2. Civil legal areas where people of color particularly need representation include family law, housing, public income and health benefit matters, education, employment and other discrimination, consumer matters and immigration.
3. While making up only 6% of Minnesota's population, people of color constitute 23% of the people represented by legal aid programs.
4. People of color are less likely to have access to representation in civil cases.
5. The lack of resources for legal aid programs is a major barrier to access to representation for people of color.

Recommendations:

1. The Legislature should appropriate a higher level of funding to legal aid programs to enable them to increase legal representation for people of color, particularly with respect to family law, housing, public benefits, immigration, discrimination and education matters.
2. The Supreme Court, the Minnesota State Bar Association (MSBA), Minnesota Minority Lawyers Association (MMLA), other minority law associations, and legal aid providers should strengthen their commitment to motivating private attorneys to provide pro bono or reduced-fee services, or otherwise financially support representation to people of color.
3. The Supreme Court should encourage and support MSBA and Legal Aid Society efforts to raise foundation dollars, to leverage pro bono time, to create a specialized employment and/or housing discrimination panel (including necessary training, and support and administration activities), to assist people of color.¹⁵³

Thus, while lawyers in Minnesota have made tremendous strides in providing legal services to low-income persons in Minnesota over the past ninety years, some 200,000 low-income persons are currently hurt by a lack of access to legal representation each year, and a disproportionate number of those persons are women and people of color. There remains a great deal of work to be undertaken in the next few years, one step at a time.

152. *Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLINE L. REV. 477, 680-81 (Spring 1993).

153. *Id.* at 680-82.